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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT COURT OF NEVADA

DENNIS MONTGOMERY, an individual;  
and MONTGOMERY FAMILY TRUST, a  
California Trust,

Plaintiffs,

vs.

ETREPPID TECHNOLOGIES, LLC, a  
Nevada Limited Liability Company;  
WARREN TREPP, an individual; and the  
UNITED STATES DEPARTMENT OF  
DEFENSE;

Defendants.

AND RELATED MATTERS.

Case No. 3:06-CV-00056-PMP-VPC  
BASE FILE

Case No. 3:06-CV-00145-PMP-VPC

**ATIGEO'S AND MICHAEL  
SANDOVAL'S OBJECTION TO FORM  
OF PROPOSED DISMISSAL RELATING  
TO CONFIDENTIALITY OF A  
SETTLEMENT**

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 The eTreppid, Montgomery, Opspring, and Blixseth parties have reached an undisclosed  
3 settlement and have asked this Court to dismiss claims among those parties with prejudice. *See*  
4 Docket No. 866. Thereafter, the Montgomery parties, Ms. Blixseth, and Opspring (collectively  
5 the “Montgomery/Blixseth parties”), who have been assigned all remaining claims against  
6 Atigeo, LLC and Mr. Sandoval (collectively “Atigeo”), agreed to a dismissal with prejudice of  
7 all such claims against Atigeo. Accordingly, all claims have been resolved.

8 Nonetheless, Atigeo objects to one aspect of the form of dismissal submitted by the  
9 eTreppid and Montgomery/Blixseth parties. That proposed order asks this Court to order that the  
10 settlement among those parties “shall remain confidential.” *See* Docket No. 866-2. If the  
11 settling parties mean only that the agreement is confidential as to the rest of the world, Atigeo  
12 has no objection. If, however, the proposed order is intended to prohibit Atigeo or Mr. Sandoval  
13 from seeking discovery of the terms of the agreement in other litigation, the request is  
14 inappropriate for the following reasons.

15 First, the request is not properly before this Court. Parties may only seek relief from the  
16 Court through a properly-noticed and supported motion. Fed. Rule Civ. Proc. 7(b). Here, the  
17 settling parties have not filed any motion relating to confidentiality of their undisclosed  
18 settlement, let alone offered any support. Indeed, it is unclear how the Court could possibly  
19 consider and rule upon the confidentiality of the settlement agreement, at least as to Atigeo,  
20 when that agreement has not been presented to the Court.

21 Second, the issue is not ripe for resolution as the settling parties have not asked the Court  
22 to approve the settlement. Nor has any party sought disclosure of the agreement through  
23 discovery. Atigeo notes that Mr. Flynn’s objection is neither a discovery request nor a properly-  
24 noticed and supported motion. Fed. Rule Civ. Proc. 7(b). Nonetheless Atigeo takes no position  
25 as to Mr. Flynn’s contentions except to submit that any order in response should be without  
26 prejudice to Atigeo’s rights.

1 Third, Ms. Blixseth and her companies previously filed claims against Atigeo in Seattle,  
2 Washington relating to an agreement among those parties. Ms. Blixseth's claims were dismissed  
3 with prejudice. Atigeo then filed claims against Ms. Blixseth and her companies in Seattle  
4 pursuant to that same agreement for, among other things, indemnification of the claims asserted  
5 against it in this Nevada action. Thus, regardless of the dismissals in this action, the settlement  
6 among the eTreppid and Montgomery/Blixseth parties may be relevant and discoverable in  
7 continuing litigation in another forum. The potential discoverability of the settlement in another  
8 action, however, is again not ripe for resolution as no request for disclosure has been made.

9 Accordingly, out of an abundance of caution, Atigeo respectfully submits that any order  
10 by the Court as to the confidentiality of the settlement agreement should be without prejudice to  
11 Atigeo or Mr. Sandoval's right to seek discovery, as appropriate, in other proceedings.

12  
13 DATED this 1<sup>st</sup> day of October, 2008.

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**CERTIFICATE OF SERVICE**

I, Gregory G. Schwartz, declare:

I am employed in Seattle, Washington, by the law offices of Rohde & Van Kampen, 1001 Fourth Avenue, Suite 4050, Seattle, Washington. I am over the age of 18 years and not a party to this action.

I hereby certify that on October 1, 2008, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send a notification of such filing to the following:

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8 I declare under penalty of perjury under the laws of the State of Washington that the  
foregoing is true and correct, and that this declaration was executed on September 17, 2008.

9  
10 s/ Gregory Schwartz  
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